

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LORI LYNN HEETHUIS,

Case No. 1:19-cv-940

Plaintiff,

HON. PAUL L. MALONEY

v.

COUNTY OF MUSKEGON; and,
RYAN BOIKE, Individually,

Defendants.

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PLAINTIFF'S MOTION FOR LEAVE TO FILE EXHIBITS
TO PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
UNDER RESTRICTED ACCESS

**** EXPEDITED CONSIDERATION REQUESTED ****

Plaintiff, Lori Lynn Heethuis, by her attorneys, DREW COOPER & ANDING, submits this Motion for Leave to File Exhibits to Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment Under Restricted Access pursuant to W.D. Mich. LCivR 10.6.

For reasons explained in Plaintiff's attached Brief in Response, Plaintiff respectfully requests that this Court GRANT Plaintiff's Motion for Leave to File Exhibits to Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment Under Restricted Access.

On April 7, 2021, counsel for Plaintiff contacted opposing counsel requesting concurrence regarding this Motion for Leave to File Exhibits Under Restricted Access, and counsel for Defendants concurred. Expedited consideration is requested, as the deadline for Plaintiff to file her Response in Opposition to Defendants' Motion for Summary Judgment is Thursday, April 8, 2021.

Dated: April 7, 2021

By: /s/ Stephen R. Drew
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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE EXHIBITS
TO PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
UNDER RESTRICTED ACCESS

**** EXPEDITED CONSIDERATION REQUESTED ****

I. INTRODUCTION

Plaintiff Lori Lynn Heethuis, hired on April 11, 1998, was a Deputy Corrections Officer for Defendant County of Muskegon's Sheriff's Office for over 21 years. Beginning in 2009, Plaintiff was physically and sexually harassed by two male employees, one of whom was a sergeant. In addition to complaints that she made regarding this harassment, on October 19, 2016, Plaintiff testified in a deposition, in an ACLU case against the County of Muskegon (*Semelbauer, et al. v. Muskegon County, et al.*), about the discriminatory jail conditions that existed for female inmates, and the facts supporting their claims of gender discrimination and of male corrections officers violating their constitutional rights

A portion of Plaintiff's claim in the present matter is that in retaliation for her past complaints of sexual harassment, her testimony and for complaining about having to work around her alleged abuser , she was targeted and disciplined, and eventually, on April 23, 2019 after 21 years of employment, she was forced to sign a Last Chance Agreement or be terminated. A "Last Chance Agreement" that was in reality a Full Release of all sexual harassment, retaliation, employment and civil rights claims or actions she had, with a threat that if she did not sign, she would immediately be terminated. There was a practice and pattern of retaliation against Plaintiff, including heavily and unreasonably scrutinizing Plaintiff's work and making demands of her that were not made of similarly situated male deputies, including wrongfully and maliciously telling Plaintiff's coworkers that she was mentally unfit, and then having Plaintiff examined by a psychologist to prove she was unfit for duty. Plaintiff's allegations against Defendants include claims of gender discrimination, retaliation, and eavesdropping.

II. EXHIBITS UNDER RESTRICTED ACCESS

The parties have engaged in significant discovery, including numerous depositions, and they have exchanged a significant amount of documents and other records. Plaintiff and Defendants have

agreed that some of the documents produced contain sensitive, personal, and confidential information, including, but not limited to, medical records, fitness for duty records, testimony referencing medical records, testimony of any healthcare professionals, documents related to the internal operations of the Muskegon County Jail and Sheriff's Office, including Sheriff's policies, procedures, jail diagrams, internal investigations, and other protected information as agreed to be confidential pursuant to the parties Stipulated Protective Order (ECF No. 25). In particular, medical records, any testimony regarding medical records, and testimony of any healthcare professionals contain protected and private medical health information, and access to it should be restricted. Plaintiff requests that documents of this nature not be allowed to be accessed and viewed by the public.

On March 11, 2021, Defendants filed their Motion for Summary Judgment (ECF No. 92), with a few exhibits filed under restricted access (ECF No. 93). Plaintiff requests that the following exhibits to Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment be allowed to be filed under restricted access:

- Exhibit 3: Muskegon County EEO Complaint
- Exhibit 4: Addendum to EEO Complaint
- Exhibit 5: Muskegon County EEO Complaint Findings
- Exhibit 7: Matthew N. Powell, D.O. Dep Transcript Excerpt
- Exhibit 8: Diane Streng, LLP Dep Transcript Excerpt
- Exhibit 14: Dr. Matthew Powell Fit for Duty Report
- Exhibit 15: Dr. John Beyer Fit for Duty Report
- Exhibit 16: Dr. Diane Streng Fit for Duty Report
- Exhibit 20: Dr. Joseph Auffrey Deposition Transcript Excerpt
- Exhibit 21: Joseph J. Auffrey Psychological Evaluation
- Exhibit 22: Plaintiff's MMPI Results

Pursuant to W.D. Mich. LCivR 10.6(b), documents may be submitted under seal only if authorized by statute or by the court for good cause shown. Defendants in this matter filed a Motion to File Exhibits Under Seal (ECF No. 86), and the Court issued an Order granting Defendants Motion in part indicating that Defendants are allowed to file their requested documents under restricted access rather than under seal (ECF No. 88).

Furthermore, in Defendants' Motion to File Exhibits Under Seal (ECF No. 86), Defendants state that Defendants do not contest Plaintiff's request to file her mental health or medical documents under seal (ECF No. 86, PageID.559).

III. CONCLUSION

For the reasons identified above, Plaintiff respectfully requests that this Court GRANT Plaintiff's Motion for Leave to File Exhibits to Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment Under Restricted Access, and specifically allow Plaintiff to file Exhibits 3, 4, 5, 7, 8, 14, 15, 16, 20, 21, and 22 under restricted access to prevent private medical health information, and other protected information, as agreed to be confidential pursuant to the parties Stipulated Protective Order (ECF No. 25), from being accessed and viewed by the public. Expedited consideration is requested, as the deadline for Plaintiff to file her Response in Opposition to Defendants' Motion for Summary Judgment is Thursday, April 8, 2021.

Dated: April 7, 2021

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CERTIFICATE OF SERVICE

I, Stephen R. Drew, certify that I am an attorney with the law firm of DREW COOPER & ANDING, and on April 7, 2021, the foregoing document was electronically filed with the Clerk of the Court using the U.S. District Court for the Western District of Michigan CM/ECF Filing System, and that copies will be provided to all Attorneys of Record via the CM/ECF System.

Dated: April 7, 2021

By: /s/ Stephen R. Drew

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